~~TYPED COPY.~~ Amended Petition (5)

BEFORE THE HON'BLE HIGH COURT OF CHHATISGARH AT BILASPUR

W.P.NO. 830/2004.

PETITIONER.

1. SHRI RAM MISHRA ,
S/O SUDARSAN MISHRA.
XEROX OPERATOR,
OFFICE OF THE CHIEF GENERAL MANAGER,
BHATGAON AREA,
SOUTH EASTERN COALFIELDS LIMITED,
SURGUJA (C.G.)

2. GYANESHWAR MISHRA,
S/O SHRI RAM MISHRA,
STENO TYPIST,
OFFICE OF CHIEF GENERAL MANAGER,
BHATGAON AREA,
SOUTH EASTERN COALFIELDS LTD.,
SURGUJA (C.G.)

VERSUS

RESPONDENTS.

1. CHIEF GENERAL MANAGER
BHATGAON AREA,A
SOUTH EASTERN COALFIELDS LIOMITED,
SURGUJA (C.G.)

2. GENERAL MANAGER, REGD. OFFICE,
SEEPAT ROAD,
P.B. NO. 60, S.E.C.L.
BILASPUR (C.G.)

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA FOR THE ISSUANCE OF WRITS IN THE NATURE OF MANDAMUS, CERTIORARI AND OR ORDERS (S) AND/OR DIRECTION (S) IN THE NATURE OF WRITS.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 830 of 2004

Petitioners Shri Ram Mishra and another

Versus

Respondents Chief General Manager and another

Post for order on 1st September, 2006.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 830 of 2004

Petitioners — Shri Ram Mishra and another

Versus

Respondents — Chief General Manager and another

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri K. R. Nair, Advocate for the petitioners.

Shri P. S. Koshy, Advocate for the respondents.

O R D E R

(1st September, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioners, being aggrieved by the order dated 31.3.2004 (Annexure R/3 and R/3-A), passed by the Chief General Manager, Bhatgaon Area, South Eastern Coalfields Limited (SECL), whereby the petitioners were removed from service w.e.f. 1.4.2004, have filed this petition impugning the said orders and seeking quashing of the charge-sheets dated 20.12.2003 and 10.12.2003 (Annexure P/1 and P/2).

2. The material facts, leading the filing of this petition may shortly be stated as follows. The petitioners were convicted for offences punishable under Sections 304-B read with 34 and 201 of the Indian Penal Code for having committed the dowry death of daughter-in-law of the petitioner No. 1 and have been sentenced to undergo rigorous imprisonment for 7 years and rigorous imprisonment for two years with payment of fine of Rs. 500/-, in default of payment of fine amount three months simple imprisonment, each, respectively, vide judgment dated 7.11.2003

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passed by the 3rd Additional Sessions Judge, Soorajpur, District-Surguja (F.T.C.) in Sessions Trial No. 393/2001. The appeal filed thereon, being Criminal Appeal No. 203/2003, is pending consideration before this Court, wherein the sentences imposed upon the petitioners have been suspended vide order dated 13.11.2003 (Annexure P/11).

3. According to learned counsel for the petitioners, the petitioners made an application to the respondents/Coalfields Limited for permitting them to join their duties. No order, according to the petitioners, was passed on the said application. The charge-sheets dated 20.12.2003 and 10.12.2003 were issued to the petitioners to the effect that their conviction in the criminal Court amounts to misconduct and they were called upon to submit their explanation to the charges, as to why they should not be removed from service ? The petitioners submitted their reply dated 7.4.2004 (Annexure P/5 and P/6), separately, admitting that the petitioners have been convicted and sentenced by the trial court, the appeal against the judgment passed by the trial court is pending and the sentences imposed upon them have been suspended, as stated above. It was further stated that as per clause 26.8 of the Standing Orders, the conviction does not involve moral turpitude. It is submitted that proper enquiry be held before taking any action against them.

4. After having considered their explanation, the show cause notice dated 4/5.2.2004 (Annexure R/1 and Annexure R/1-A) were issued to the petitioners, seeking their explanation as to why the petitioners be not removed from service as the conviction involves moral turpitude. The reply (Annexure R/2 and Annexure R/2-A) to the show cause was filed by the petitioners. It appears, having

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considered the reply filed by the petitioners, the respondents/ Coalfields Ltd. passed the order of termination dated 31.3.2004 (Annexure R/3 and R/3-A).

5. The main question of law, involved in the present case is, as to whether the conviction for an offence punishable under Section 304-B/34 and 201 of the I.P.C. involve moral turpitude ? Moral turpitude is defined in 'Advanced Law Lexicon 3rd Edition', (page 3068), the relevant portion of which is reproduced herein below;

> *"Moral turpitude. Anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a main owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (Ame.Cyc.)*
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> *1. Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude-such as fraud or breach of trust-traditionally make a person unfit to practice law.-Also termed moral depravity. 2. Military law. Any conduct for which the applicable punishment is a dishonorable discharge or confinement not less than one year. (Black, 7th Edn., 1999).*
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> *"Moral turpitude means, in general, shameful wickedness-so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people." 50 Am. Jur. 2d Libel and Slander, S.165, at 454 (1995)."*

and secondly as to whether the enquiry as contemplated under clause 28.1 of the Standing Orders is necessary to establish whether the said conviction involved moral turpitude or not ?

6. I have heard Shri K. R. Nair, learned counsel for the petitioners and Shri P. S. Koshy, learned counsel for the respondents and perused the documents appended to the petition and also to the return. It is admitted that the petitioners were convicted for the offences punishable under Sections 304-B read with 34 and 201 of the Indian Penal Code for having committed dowry death of the daughter-in-law of the petitioner No.1 and they have been sentenced to undergo rigorous imprisonment for seven years and two years with fine. Moral turpitude as defined is a conduct which is contrary to justice, honesty or morality or ethics as to shocking to the moral conscience of the community. The offences committed by the petitioners involve moral turpitude, as it is not only contrary to justice, honesty or morality but it shocks to the moral conscience of the community.

7. Clause 27 of the Certified Standing Orders provides for penalties for misconduct. Clause 28 provides for procedure for imposition of penalty. Under clause 28.1 if an employee is charged with a misconduct he shall be informed in writing of the allegations against him by the competent authority and shall be given an opportunity to submit his explanation in writing within a period of not less than three days. On receipt of a workman's explanation when allegations are denied by him, an enquiry shall be held, normally by an Officer or Officers of the company appointed by the management. At the enquiry, the workman concerned shall be afforded reasonable opportunity of defending himself. The workman concerned shall be entitled to be represented or assisted by a co-worker or office bearer of a trade union of which he is a member, if so requested by him during the enquiry.

8. The acts of misconduct are defined in clause 26. Clause 26 provides for Acts of Misconduct. Under clause 26.8 'conviction in any court of law for any criminal offence involving moral turpitude' comes within the definition of misconduct. The conviction of this nature wherein the offence is against justice and morality and shocks to the moral conscience of the community, the offence involves moral turpitude. In the case of **Pawan Kumar Vs. State of Haryana and another**[1] in para 12 it is observed that "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.

9. Whether the enquiry before imposing punishment of removal of service is necessary in the facts of the case, where the conviction of the petitioners for the offences punishable under Sections 304-B read with 34 and 201 of the Indian Penal Code have been held on the basis of full trial by the criminal Court. The enquiry, as provided under clause 28.1 may be a mere formality. In Second proviso to Article 311 of the Constitution of India it is provided that no enquiry is necessary where a person is dismissed or removed or reduced in rank on the ground of a conduct which had led to his conviction on a criminal charge.

10. In the present case the petitioners were given show cause notice and the petitioners have filed their explanation/reply to the show cause notice, the employer after having considered the reply of the petitioner, passed the order of removal from service and as such, no enquiry under clause 28.1 of the Certified Standing Orders is necessary.

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11. The Supreme Court in the case of **Viveka Nand Sethi Vs. Chairman, J & K Bank Ltd. and others**[2], in para 22 has observed as under:-

> *"22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. {See Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash.[3]} The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. (See State of Punjab v. Jagir Singh[4] and Karnataka SRTC v. S.G. Kotturappa[5].)"*

12. As a result and for the reasons aforementioned, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

{(1996) 4 S.C.C. 17[1]} {(2005) 5 SCC 337[2]}

Thakur